

Late yesterday, HMRC issued the much-anticipated further guidance on the new Coronavirus Job Retention Scheme, which is being introduced to support employers whose operations have been severely affected by the coronavirus disease 2019 (COVID-19). The good news is that the guidance sets out more detail on how the scheme will work and provides answers to some (but not all) of the many questions circulating on this issue since the scheme was first announced at the end of last week.

There are two sets of guidance: one aimed at [employers](#) and the other at [employees](#). As you would expect, they say broadly the same things, but, in parts, they deal with different issues bearing in mind their intended audience.

As set out in our previous [alert](#), the scheme will take retrospective effect from 1 March 2020 and will be available until 1 June 2020, at the earliest. The Chancellor has promised to extend it if necessary. Below, we set out the further information that has been provided by the government on how the scheme will work.

Who Can Claim Under the Scheme?

As previously indicated, any UK employer can apply under the new scheme, including businesses, charities, recruitment agencies (for any agency workers paid through PAYE) and public authorities, provided that they had a PAYE payroll scheme in place on or before 28 February 2020 and have a UK bank account.

Which Employees Are Covered?

In its initial announcement, the government used the terms “employee” and “worker” interchangeably, but this new guidance makes it clear that this scheme will only be available to employees, whether full-time, part-time, on agency contracts, flexible or zero-hours contracts.

There has been some debate this week on whether the new scheme will cover recent recruits or staff who are due to start in the next few weeks or months. The answer is no. It will only apparently cover employees who were on the payroll on 28 February 2020. This is unfortunately likely to mean that some job offers for starts post the end of February will be withdrawn or notices to dismiss swiftly served.

One bit of good news is that it will cover employees made redundant since 28 February 2020 as a result of the virus, provided they are re-hired by their employer. This will deal with those individuals who were dismissed for that reason in the gap between the economic situation worsening and the announcement of the new job retention scheme.

As previously indicated, employees covered by the scheme will not be allowed to do any work for their employer while they are on furlough leave. The only exception is volunteer work or training – see comments below concerning the implications of their doing this.

It seems that employees who have different jobs with different employers (e.g. a few part-time jobs) will be able to continue to work for one employer while being on furlough leave with another. That would make sense. Interestingly, there would also seem to be nothing to stop an employee who has been placed on furlough leave from starting another job with a different employer during this period, subject to anything expressly to the contrary in their contract.

This scheme will not cover employees who are working reduced hours or are on short-time working; the scheme is only designed to cover employees who are not working at all for their employer.

What Costs Will Be Covered?

Under the scheme, employers will receive a grant from HMRC to cover the lower of (i) 80% of an employee’s regular wage; or (ii) £2,500 per month, plus the associated employer National Insurance Contributions (NICs) and minimum automatic enrolment employer pension contributions on that subsidised wage. Fees, commission and bonuses will not be covered.

The guidance makes it clear that employers will be able to top up employees’ wages to 100%, but are not obliged to do so.

Employers should be aware that if they top up salary, they will be responsible for the additional employer NICs and automatic enrolment pension contributions. Apparently, HMRC will be issuing more guidance on how employers should calculate their claims for employer NICs and minimum automatic enrolment employer pension contributions before the scheme goes live.

For full-time and part-time employees, their actual salary before tax, as at 28 February 2020, should be used for the purposes of the 80% calculation. For those employees whose pay varies, it is the higher of either the same month’s earnings from the previous year or their average monthly earnings from the 2019/20 tax year, assuming they have been working for at least 12 months. For those who have worked for less than 12 months, employers should take into account their average monthly earnings since they started work.

Employers will be able to submit a claim every three weeks, being the minimum amount of time that an employee can be furloughed for. The maximum period of a claim is three months, but this may be extended if the crisis continues.

Different Types of Employees

The guidance expressly deals with a number of scenarios that we know employers have been seeking clarity upon:

- **Employees on sick leave** – Employees who are on sick leave or who are self-isolating in line with government guidance cannot be furloughed while on sick leave (they should receive Statutory Sick Pay instead), but they can be furloughed after this, namely when they were due to return to work. On the other hand, employees who are “shielding” in line with public health guidance (e.g. those who are extremely vulnerable or have received a letter from NHS England advising them to avoid social contact, etc.) can be placed on furlough.
- **Employees doing volunteer work or training** – Furloughed employees will be able to take part in volunteer work or training during furlough leave “as long as [they do not] provide services to or generate revenue for their employer.” The guidance goes on to say that if workers are required to complete online training courses while they are furloughed, they will have to be paid at least the National Living Wage/National Minimum Wage for the time spent on training, even if this means that more than 80% of their wage that will be subsidised.
- **Employees on maternity leave** – The guidance suggests that employees on maternity leave cannot be furloughed, but that if an employer offers enhanced contractual maternity pay, this will be included as wage costs and can be recovered under the scheme in the same way as other wage costs. The same goes for employees who are entitled to enhanced paternity, adoption or shared parental pay. As you would expect, the guidance aimed at employees makes it clear that pregnant employees who are due to start maternity leave may see their Statutory Maternity Pay reduced to reflect their lower earnings while on furlough leave.
- **Employees on unpaid leave** – Only employees who were placed on unpaid leave after 28 February 2020 can be furloughed.

Rights of Employees

The guidance states that employees who have been furloughed have the same rights as they did previously, including the right to claim unfair dismissal and a statutory redundancy payment (subject to meeting the eligibility criteria of course). The guidance does not answer the question of whether holiday accrues during the furlough period.

Rotating Employees on Furlough Leave

One question we have been asked this week is whether employers can rotate the employees who are placed on furlough leave, so they do not end up with one group of employees disgruntled because they have had to come into work and another group who do not have to come to work but are disgruntled by their reduced earnings. The new guidance contains no definitive statement but the answer appears to be yes, although employers cannot place employees on furlough leave for less than three weeks at a time. Therefore, for example, rotating employees on a week-on/week-off basis is not an option, but month by month should be. Obviously, employers need to ensure they do not discriminate when selecting employees to be furloughed. Employers should also make it clear the basis on which employees are being furloughed and when they can be required to return to work/ be taken off furlough.

Redundancy

Another question we have been asked is whether employers can make employees redundant/serve notice of redundancy while they are on furlough leave. The employer guidance does not address this point directly but the employee guidance indicates that this is possible because it says, “your employer can still make you redundant while you are on furlough or afterwards.” Clearly, this is not the intention behind the scheme (which is to preserve jobs as far as possible), but it is possible.

National Minimum Wage

Contrary to some reports, employers will only be required to pay the lower of 80% of an employee’s salary, or £2,500, even if, based on their usual working hours, this would be below National Living Wage/National Minimum Wage. See comments above in relation to any training carried out by employees during furlough leave.